In State v. *Housekeeper,* 70 Md. 162, 169, in which the husband claimed that an operation was performed without his consent and that the surgeon was consequently liable, the court says: "If she consented to the operation the doctors were justified in performing it, if after consultation, they deemed it necessary for the preservation and prolongation of the patient's life. Surely the law does not authorize the husband to say to his wife, you shall die of the cancer; you cannot be cured, and a surgical operation affording only temporary relief, will result in useless expense. The husband has no power to withhold from his wife the medical assistance which her case might require." See, also, *M'Clallen* v. *Adams,* 19 Pick. 333, in which it was held that it was not necessary for the surgeon to give notice to the husband of his intention to perform upon the wife a dangerous operation, to which her assent could be presumed from the circumstances, where the husband had placed his wife under the care of the surgeon for medical and surgical treatment for a dangerous disease. It should be observed, however, that it is a wise precaution for the surgeon to secure the consent of both husband and wife before performing upon either a capital operation.

While the consent of the parents before operating upon a minor child should ordinarily be secured by the surgeon, it is probable that the consent of the child to a necessary operation, if of such age and understanding as to appreciate the situation and the nature of the operation, would protect the surgeon, although so far as the writer has observed, this question has not as yet been passed upon by a court of last resort. H. B. H.

THE KANSAS OIL REFINERY BILL.—The case of *State ex rel. Coleman, Atty. Gen.* v. *Kelly* (1905), — Kan. —, 81 Pac. Rep. 450, in which the so-called "Kansas Oil Refinery Bill" was declared unconstitutional, contains perhaps more of interest for the historian and the economist than for the lawyer. This bill marked the culmination of the contest waged within the last year by the State of Kansas against the Standard Oil Company. The substance of the bill is indicated in its title, which is "An act to provide for branch penitentiary and oil refinery in connection therewith, the issuance of bonds for said purpose, and making an appropriation therefor, and for the payment of principal and interest on said bonds." (Laws 1905, p. 783, c. 478.) The warden of the penitentiary is empowered to secure a site for such branch penitentiary and oil refinery, and to construct, maintain and operate on such site an oil refinery as a department of the State Penitentiary, to furnish the requisite machinery and equipment and to market the products of said refinery. The warden is also authorized to employ convicts in the construction of the plant and in operating it when completed, and to provide "suitable and humane quarters" for housing, feeding and guarding such convicts. Lump sums are appropriated for these purposes, to be raised from the proceeds of state bonds, the issue and sale of which are duly authorized.

This case was a proceeding on the relation of the attorney general for a peremptory writ of mandamus to compel the warden and the state treasurer to issue the bonds and apply the proceeds as directed by said bill. The sole

question to be determined was the constitutionality of the act, and that, the court declared, must depend upon the object and purpose of the bill. The court found some difficulty in deciding what the object was, from an inspection of the provisions of the act itself, and therefore availed itself of the right to take "into consideration the history of the enactment and the conditions of the people of the state at that particular time." Authority for such a course in construing a statute is abundant (See *United States* v. *Union Pacific R'y Co.*, 91 U. S. 72, 23 L. Ed. 224 and cases there cited) and had been recently asserted in *Johnson* v. *Southern Pacific Co.*, 196 U. S. 1, 25 Sup. Ct. 158. Among the conditions and records of which the court thus took judicial notice, were the notorious facts concerning the warfare which had been waged by independent oil refiners and many of the people of Kansas on the one side and the Standard Oil Company on the other side, the recent discovery of enormous oil reservoirs, the Senate journals and the message of Governor Hoch accompanying his approval of the bill in question. From a consideration of these and other circumstances the court reached the conclusion that the prime object of the bill was to establish and operate an oil refinery, and not to establish a branch penitentiary, and therefore that it was clearly violative of Section 8 of Article II of the Constitution of Kansas, which is as follows: "The state shall never be a party in carrying on any works of internal improvement." There would seem to be little room for doubt about the correctness of this conclusion.

It is interesting to note that this case is the first occasion since the adoption of the constitution, forty-six years before, on which it has become "necessary to invoke the aid of this provision of the constitution to protect the state, in its sovereign capacity, from the public disaster which history shows would follow its engaging in a purely private business enterprise." This carries us back to that period in our history, beginning shortly after the War of 1812, when the craze for "internal improvements" at federal and state expense, led to the adoption in so many state constitutions, between 1830 and 1850, of provisions authorizing and in some instances directing state authorities to undertake such improvements. The story of the wild-cat enterprises which followed and which with other conditions produced the profound financial distress of that period and which resulted finally in the adoption, by many states from 1850 on, of constitutional provisions like that here involved, prohibiting state participation in "internal improvements," is told briefly but interestingly in the well known case of *Attorney General* v. *Pingree*, 120 Mich. 550, 79 N. W. 814, 46 L. R. A. 407, which is quoted at some length in the principal case. The whole episode is an illuminating instance of one feature of the American form of government in which, as all Americans believe, it excels any other government known to history, namely, the admirable constitutional scheme of checks and balances. For, however much the people of Kansas may have reason to complain of the oppression of the great trust at which this bill was aimed and however desirable state ownership and operation of such forms of industry may be, when conditions are ripe for it, yet in the light of subsequent events and disclosures in Kansas, it can scarcely be doubted that this constitutional provision saved the people of Kansas from embarking

under unfavorable conditions and auspices upon an enterprise for which they were not ready, and that it checked, at an opportune time and place, the rising tide of state socialism. H. M. B.

GARNISHMENT OF PUBLIC CORPORATIONS.—Of all the doctrines, supported by fine reasoning, promulgated on considerations of public policy, and generally accepted by the judiciary, but emphatically and universally denounced and repudiated by the people, one of the most conspicuous is the rule of construction by which more than half the courts of the several states have held that "any person" or "any person or corporation" in the statutes declaring who may be made garnishees, cannot be construed to include public corporations.

The principal reason given for this strict construction is that it would interfere with the performance of their public functions if they could be required to respond to such garnishments. It was said that the officers of the municipality would be required to leave their public duties unperformed to answer garnishment suits; and public enterprises would be paralyzed by the diversion of public funds from their true purpose; for who would serve the public if his earnings were to be paid to his creditors instead of to himself, and who could execute the great building contracts for the public if each installment should be liable to be seized by a general creditor of the contractors before they could get any of it to buy materials and pay the laborers to do the next division of the work. It was seen that to permit such proceedings would produce a general public calamity. Better that one creditor should go forever unpaid than that the whole business of the commonwealth should be paralyzed. A few courts thought that men who pay their honest debts could be induced to enter the public service if others would not remain, and even ventured the surmise that they would make good public servants; but the general opinion of the judges seemed to be the other way.

The Supreme Court of Minnesota adopted the strict construction rule at an early day, and a few years ago went to such an extreme as to hold that a private citizen could not be charged as garnishee of the public surveyor for a debt due as fees for public services (*Sexton* v. *Brown* [1897], 72 Minn. 371, 75 N. W. 600), nor a city for the remnant of the salary of an ex-official. *Orme* v. *Kingsley* (1898), 73 Minn. 143, 75 N. W. 1123, 72 Am. St. Rep. 614. Soon after this decision the people enacted that: "The salary or wages of any officers of, or any person employed by, any county, city, town, village, school district, or any department of either thereof, shall be liable" to garnishment the same as the wages of any other person. Minn. Gen. Laws 1901, c. 96.

A case falling within the old rule and not within the curative provisions of the statute was recently submitted to the Supreme Court of that state. A city was summoned as garnishee to reach a debt to one not an officer and not an employé. The court was urged to apply the strict rule; but in view of the evident wish of the people, the court held that the rule must be considered entirely changed; and the garnishee was accordingly held properly charged. *Mitchell* v. *Miller* (1905), — Minn. —, 103 N. W. 716.

J. R. R.